

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

Confirmation No.: 6941

Masami SHIMIZU

Date: February 28, 2008

Serial No.: 10/789,200

Filed: February 26, 2004

Patent No.: 7,278,965

Issued: October 9, 2007

For: OPERATING MECHANISM FOR MEDICAL DEVICE

VIA EFS WEB

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

REQUEST FOR CERTIFICATE OF CORRECTION

Sir:

Pursuant to 37 C.F.R. § 1.322(a), it is requested that the above-identified patent be corrected as follows:

IN THE CLAIMS:

Claim 5, column 16, line 19, after "The operating mechanism of claim 1" delete "wherein the medical device, wherein the medical device".

Claim 5, column 16, line 19, after "The operating mechanism of claim 1" insert -- including the medical device which --.

Claim 8, column 16, line 55, after "The operating mechanism for a medical device according to" delete "claim 6" and insert -- claim 7 --.

Claim 11, column 17, line 26, after "position of the moving member to switch the" delete "functional".

A Certificate of Correction (Form PTO/SB/44) is enclosed.

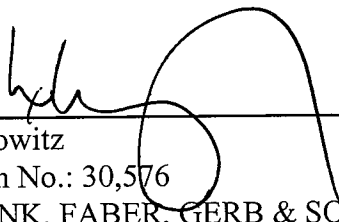
During prosecution of the subject patent, Applicant amended claims 11 and 20 in an RCE/Amendment dated May 22, 2007 (copy enclosed). Claim 20 was renumbered as claim 5 in the issued patent. Claim 8 was amended in the Examiner's Amendment (copy enclosed) to correct the dependency. However, due to the renumbering of the claims in the issued patent, the dependency for claim 8 is now incorrect. Additionally, portions of the text that was amended has been inadvertently changed in the issued patent, thus necessitating this request.

As these errors were the fault of the Patent Office, no fee is enclosed. Should any fee be required to issue the Certificate of Correction, the fee may be charged to our Deposit Account No. 15-0700.

Respectfully submitted,

THIS CORRESPONDENCE IS BEING
SUBMITTED ELECTRONICALLY
THROUGH THE PATENT AND
TRADEMARK OFFICE EFS FILING
SYSTEM ON February 28, 2008.

MM:kc



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(Also Form PTO-1050)

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT NO : 7,278,965

DATED : October 9, 2007

INVENTOR(S) : Masami SHIMIZU

It is certified that error appears in the above identified patent and that said Letters Patent is hereby corrected as shown below.

IN THE CLAIMS:

Claim 5, column 16, line 19, after "The operating mechanism of claim 1" delete "wherein the medical device, wherein the medical device".

Claim 5, column 16, line 19, after "The operating mechanism of claim 1" insert -- including the medical device which --.

Claim 8, column 16, line 55, after "The operating mechanism for a medical device according to" delete "claim 6" and insert -- claim 7 --.

Claim 11, column 17, line 26, after "position of the moving member to switch the" delete "functional".

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7,278,965

PATENT NO. _____



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Burden Hour Statement: This form is estimated to take 1.0 hour to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

COPY

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Max Moskowitz on May 25, 2007.

The application has been amended as follows:

IN THE CLAIMS

As to claim 8, line 2, replace "7" with -6--.

As to claim 14, line 2, replace "13" with -11--.

Replace claim 20 with the following:

20. The operating mechanism of claim 1, in combination with the medical device, wherein the medical device is adapted to be sterilized at high-pressure in an autoclave.

2. The following is an examiner's statement of reasons for allowance:

Each of independent claims 1, 5 and 11 are amended to recite a certain combination of elements which further includes an elastic portion elastically deformable in accordance with a user operation, wherein the switching-function change-over unit is adapted to move the moving

Art Unit: 3739

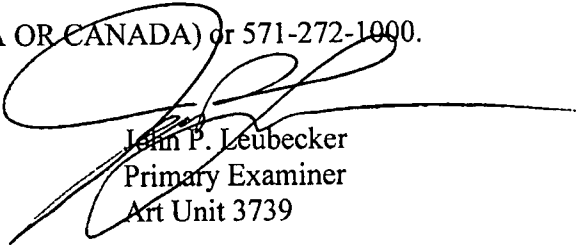
member by magnetic force into the position in which an operation is designated against the biasing force of the biasing unit in accordance with an elastic deformation of the elastic portion caused by the user operation of the operating member (this language taken from claim 1—claims 5 and 11 have substantially similar language). Since the Lee et al. device (US 2003/0090352; cited in the previous Office Action) discloses the movement (e.g., pivoting or sliding) of a rigid member that is analogous to the operating member in the claims, Lee et al. does not meet the limitations set forth above. Nor would the combination of Taira (U.S. Pat. 4,982,726) in view of Horton (U.S. Pat. 5,701,200) and further in view of Giannini (U.S. Pat. 4,025,885), as proposed by the Examiner in the previous Office Action, meet the above mentioned limitations. Since none of the other prior art of record explicitly teach or fairly suggest the combination of elements as now claimed in claims 1, 5 and 11, these claims are allowable. It is noted that the amendments to claims 8 and 14 above are only made to correct dependencies due to the cancellation of claims. The amendment to claim 20 was only made to provide proper antecedence for the term medical device, such that it could be further defined.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled “Comments on Statement of Reasons for Allowance.”

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John P. Leubecker whose telephone number is (571) 272-4769. The examiner can normally be reached on Monday through Friday, 6:00 AM to 2:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



John P. Leubecker
Primary Examiner
Art Unit 3739

jpl

COPY

P/16-353 (V3921)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

Masami SHIMIZU

Serial No.: 10/789,200

Filed: February 26, 2004

For: OPERATING MECHANISM FOR MEDICAL DEVICE

Confirmation No.: 6941

Date: May 22, 2007

Group Art Unit: 3739

Examiner: John P. LEUBECKER

VIA EFS WEB

Mail Stop RCE

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

AMENDMENT/SUBMISSION

Sir:

This submission accompanies an RCE and serves as a response to the final Office Action mailed January 22, 2007 in the above-identified application. Reconsideration is respectfully requested.

FEE CALCULATION

Any additional fee required has been calculated as follows:

_____ If checked, "Small Entity" status is claimed.

	NO. CLAIMS AFTER AMENDMENT		HIGHEST NO. PREVIOUSLY PAID FOR		EXTRA PRESENT		RATE	ADDIT. FEE
TOTAL	14	MINUS	20	* =	0	X	(\$25 SE or \$50)	\$0
INDEP.	4	MINUS	4	** =	0	X	(\$100 SE or \$200)	\$0
FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM						X	(\$180 SE or \$360)	\$0

* not less than 20 ** not less than 3

TOTAL \$ 0

If any additional payment is required, credit card payment in the amount of \$ _____ is submitted via EFS-WEB.

In the event the actual fee is greater than the payment submitted or is inadvertently not enclosed or if any additional fee during the prosecution of this application is not paid, the Patent Office is authorized to charge the underpayment to Deposit Account No. 15-0700.

CONTINGENT EXTENSION REQUEST

If this communication is filed after the shortened statutory time period had elapsed and no separate Petition is enclosed, the Commissioner of Patents and Trademarks is petitioned, under 37 C.F.R. § 1.136(a), to extend the time for filing a response to the outstanding Office Action by the number of months which will avoid abandonment under 37 C.F.R. § 1.135. The fee under 37 C.F.R. § 1.17 should be charged to our Deposit Account No. 15-0700.

SUMMARY OF AMENDMENTS

1. ☐ If checked, an abstract (an amended abstract) is submitted herewith.
2. ☐ If checked, amendment(s) to the drawings are submitted herewith.
3. ☐ If checked, amendment(s) to the specification are submitted herewith.
4. ☒ If checked, amendment(s) to the claims are submitted herewith.

LISTING OF THE CLAIMS

This listing of claims replaces all prior versions and listings of claims in the application:

1. **(Currently Amended)** An operating mechanism for a medical device, the operating mechanism comprising:

- a switching unit operable to designate ~~specified operations in an operation of an endoscope unit~~ the medical device;
- an air-tight unit configured to accommodate the switching unit air-tightly;
- a moving member disposed inside the air-tight unit, and movable between a position in which the switching unit designates ~~an~~ the operation and a position in which the switching unit designates no operation;
- a biasing unit configured to directly or indirectly bias the moving member from ~~another~~ the position in which the switching unit designates the operation to the position in which ~~no operation is designated~~ the switching unit designates no operation;
- an operating member disposed on an outside of the air-tight unit, and comprising an elastic portion deformable in accordance with a user operation ~~operable by an operator~~; and
- a switching-function change-over unit adapted to move the moving member by magnetic force into the position in which an operation is designated against the biasing force of the biasing unit in accordance with an elastic deformation of the elastic portion caused by the user operation of the operating member.

2. **(Previously Presented)** The operating mechanism for a medical device according to claim 1, wherein the switching unit is a photo-interrupter.

3. **(Previously Presented)** The operating mechanism for a medical device according to claim 1, wherein the switching unit is a switch that is placed in a conductive state by being pressed.

4. **(Previously Presented)** The operating mechanism for a medical device according to claim 1, wherein the switching-function change-over unit comprises:

a first magnet disposed on the operating member or an operating auxiliary member disposed on the outside of the air-tight unit with an air-tight unit main body interposed; and

a second magnet disposed on the moving member disposed on the inside of the air-tight unit with the air-tight unit main body interposed.

5. (Currently Amended) An operating mechanism for a medical device comprising:

a switch ~~that controls~~ positioned inside an endoscope unit of the medical device and operable to control specified functional operations an operation in [[an]] the endoscope unit;

an air-tight unit that can accommodate the switch air-tightly;

a moving member ~~which is~~ disposed inside the air-tight unit, ~~and which moves the moving member operable to move~~ between a position in ~~which the switch designates an~~ designating the operation and a position in which the switch does not designate an ~~designating no operation;~~

a biasing unit operative to bias the moving member from the position in which the switch designates the operation to the position in which the switch designates no operation;

an operating member ~~which is~~ disposed ~~on the~~ outside of the air-tight unit, ~~which can be operated the operating member operable by an operator, and which is disposed positioned~~ such that no contact is made with the moving member, the operating member comprising an elastic portion elastically deformable in accordance with a user operation; and

a switching-function change-over portion ~~which switches~~ operable to control the functional operation of the switch by varying the position of the moving member in accordance with the elastic deformation of the elastic portion caused by the user operation of the operating member by exerting a magnetic force on the moving member in opposition to the biasing force of biasing unit.

6. (Currently Amended) The operating mechanism for a medical device according to claim 5, which further comprises a biasing member that directly or indirectly biases the moving member to the position ~~in which no operation is designated~~ designating no operation.

7. (Canceled)

8. **(Previously Presented)** The operating mechanism for a medical device according to claim 7, wherein the switching-function change-over portion comprises:

a first magnet which is disposed on the operating member or an operating auxiliary member disposed on the outside of the air-tight unit with an air-tight unit main body interposed; and

a second magnet which is provided on the moving member disposed on the inside of the air-tight unit with the air-tight unit main body interposed.

9. **(Original)** The operating mechanism for a medical device according to claim 5, wherein the switch is a photo-interrupter.

10. **(Original)** The operating mechanism for a medical device according to claim 5, wherein the switch ~~is a switch that~~ is placed in a conductive state by being pressed.

11. **(Currently Amended)** An operating mechanism for a medical device comprising:

switching means ~~that controls specified functional operations in~~ for controlling an operation of an endoscope unit of the medical device positioned inside the endoscope unit;

an air-tight unit that can accommodate the ~~switch~~ switching means air-tightly;

a moving member ~~which is~~ disposed inside the air-tight unit, ~~and which moves the moving member for moving between a position in which the switch designates an~~ designating the operation and a position in which the switch does not designate an ~~designating no~~ operation;

biasing means for biasing the moving member from the position in which the switching means designates the operation to the position in which the switching means designates no operation;

operating means ~~which is disposed~~ positioned on the outside of the air-tight unit, ~~which can be the operating means operable operated by an operator, and which is disposed such that no contact is made with the moving member, the operating member comprising an elastic portion elastically deformable in accordance with a user operation;~~ and

switching-function change-over means ~~which varies for varying~~ the position of the moving member to switch the ~~functional operation designated by of the switch by operating the operating~~ means the switching means of the endoscope unit, the switching-function change-over means varying the position of the moving member by exerting a magnetic force in opposition to the biasing force of the biasing means, in accordance with elastic deformation of the elastic portion caused by the user operation.

12. - 13. (Canceled)

14. (Previously Presented) The operating mechanism for a medical device according to claim 13, wherein the switching-function change-over means comprise[[s]]:

a first magnet which is disposed on an operating member or an operating auxiliary member disposed on the outside of the air-tight unit with an air-tight unit main body interposed; and

a second magnet which is disposed on the moving member disposed on the inside of the air-tight unit with the air-tight unit main body interposed.

15. (Original) The operating mechanism for a medical device according to claim 11, wherein the switching means is a photo-interrupter.

16. (Original) The operating mechanism for a medical device according to claim 11, wherein the switching means is a switch that is placed in a conductive state by being pressed.

17. - 19. (Canceled)

20. (Previously Presented) The operating mechanism of claim 1, wherein the medical device is adapted to be sterilized at high-pressure in an autoclave.

REMARKS/ARGUMENTS

This submission accompanies an RCE and serves as a response to the Office Action dated January 22, 2007, in the above-identified application. A Petition for Extension of Time (one month) and the fee therefor are submitted herewith.

Claims 7, 12, 13 and 17-19 are canceled without prejudice or disclaimer. Therefore, claims 1-6, 8-11, 14-16 and 20 are the claims currently pending in the present application.

Claims 1, 5, 6 and 11 are amended to clarify features recited thereby.

Rejection of Claim 20 under 35 U.S.C. § 112, Second Paragraph

Claim 20 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite on the ground that the term “medical device” lacks antecedent basis. It is respectfully submitted that claim 20 depends from claim 1 which recites “an operating mechanism for a medical device.” Accordingly, the term “medical device” has sufficient antecedent basis.

Rejection of Claims 1, 3-8, 10-14 and 16 under 35 U.S.C. § 102

Claims 1, 3-8, 10-14 and 16 are rejected under 35 U.S.C. § 102(a) and (e) as being anticipated by Lee (2003/0090352). Reconsideration of this rejection is respectfully requested.

Claims 1, 5 and 11 require an operating mechanism comprising a biasing unit configured to bias the moving member from the position in which the switching unit designates the operation to the position in which the switching unit designates no operation. Lee discloses a hermetically sealed electrical switch assembly that provides on-off switching. The Office Action alleges that the frictional resistance inherent in any switch is equivalent to the biasing means for the moving member (Office Action, page 3).

However, Lee does not disclose or suggest a biasing unit that biases the moving member from a position in which an operation is designated to a position in which no operation is designated. First, as discussed in the Amendment filed on November 7, 2006, by equating the frictional resistance inherent in any switch with the biasing means, the Examiner essentially reads out from the claim the biasing unit recited by the claims, since any switch movable between physical positions would encounter some resistance in movement. Further, Lee does not disclose or suggest a biasing unit that biases a moving member from the position designating the operation to the position designating no operation, as required claims 1, 5 and 11. Thus, while a frictional resistance may inherently bias a moving member to remain stationary, a frictional resistance of a

ordinary switch would not bias the moving member from a first position of the switch designating the operation of the device to a position designating no operation.

Further, Lee does not disclose or suggest an operating member that includes “an elastic portion deformable in accordance with a user operation.” There is no deformable switch or operating member disclosed by Lee.

Claims 3 and 4 depend from claim 1, claims 6, 8 and 10 depend from claim 5, and claims 14 and 16 depend from claim 11, therefore, claims 3, 4, 6, 8, 10, 14 and 16 are patentably distinguishable over the cited art for at least the same reasons as their respective base claims.

Rejection of Claims 1-16 under 35 U.S.C. § 103

Claims 1-16 are rejected under 35 U.S.C. § 103 as being obvious from Taira (4,982,726) and Horton (5,701,200), in view of Giannini (4,025,885). Reconsideration of this rejection is respectfully requested.

Claim 1 requires “a moving member disposed inside the air-tight unit...and a switching-function change-over unit adapted to move the moving member by magnetic force into the position in which an operation is designated, the magnetic force moving the moving member in accordance with the operation of the operating member and in opposition to the biasing force of the biasing unit.” Further, claim 5 requires “a moving member disposed inside the air-tight unit...and a switching-function change-over portion operable to control the switch by varying the position of the moving member by exerting a magnetic force on the moving member in opposition to the biasing force of the biasing unit.” Finally, claim 11 requires “a moving member disposed inside the air-tight unit...and a switching-function change-over means for varying the position of the moving member by exerting a magnetic force on the moving member in opposition to the biasing force of the biasing means.”

Taira discloses an endoscope system with a suction channel of a controllable strength of suction (Taira, Abstract), including a switch 9 that includes a spring 9a wound around a rod 9b (Taira, Figs. 2(A) and 2(B); column 2, lines 42-45). Taira discloses that, according to how much the suction switch 9 is pressed down by an operator, a different amount of light can be transmitted through the photo interrupter 10, so that an extent of depression of the suction switch 9 can be determined from an interruption signal outputted from the photo interrupter 10 (Taira, column 2, lines 45-51).

The Examiner asserts that “endoscopes are intended to be inserted into the body and, unless desired to be contaminated with fluids and gases, are designed to be air-tight.” However, it is typically body liquids or splashing of cleaning liquids or fluids for blowing off drainage adhered to the observation window of the medical device that may enter or contaminate an endoscope or medical device. Accordingly, a person of ordinary skill in the art may employ a watertight structure to prevent the contamination by body fluids or the splashing of cleaning fluids. Thus, an endoscope or medical device is not required or designed to be air-tight.

Taira does not disclose or suggest a switch with a moving member that actuates a change in operation, wherein the moving member is controlled using magnets from outside of the air-tight unit. For example, according to an aspect of the invention claimed in claims 1, 5 and 11 and shown in Fig. 2 of applicant’s disclosure, a first magnet 63 is moved by operation of the operating member 61 causing the moving member 50 to be moved against the urging of the coil 65 because of the magnetic force experienced by the second magnet 64 attached to the moving member 50. Accordingly, an air-tight switch is provided with which the operating member 61 interacts without contact by means of the magnetic force. Taira does not disclose or suggest a switching-function change-over unit (or portion per claim 5, or means per claim 11) that varies the position of or that moves the moving member inside the air-tight unit by magnetic force into the position in which the operation is designated, as required by claims 1, 5 and 11.

Horton does not cure the above-cited deficiencies of Taira as they relate to the above-noted features of claims 1, 5 and 11. Horton discloses a monolithic lens relay system suited for use in an endoscope. Horton does not disclose or suggest a switching-function change-over unit (or portion per claim 5, or means per claim 11) for varying the position of or for moving the moving member inside the air-tight unit by magnetic force into the position in which the operation is designated.

Giannini also does not cure the deficiencies of Taira as they relate to the above-noted features of claims 1, 5 and 11. Giannini discloses a sealed permanent magnet switch in which a control element 12 and a follower element 14 (control and follower element both being magnets) are disposed along an axis with their poles facing one another, and a set of electrical switch contacts coupled to be selectively opened or closed depending on the position of the follower magnet (Giannini, Abstract). Giannini discloses that the control magnet exerts a repulsive force

causing the follower magnet to move axially between the first and second limits of motion (Giannini, column 1, lines 27-32).

The magnet switch of Giannini appears to be a bias unit because the switch moves the follower permanent magnet element 14 against the force of the spring 108 when the magnets have an S to S (South to South) or N to N (North to North) relation. However, when the magnets do not have this S to S or N to N relation, that is, when the magnets are not in a state of repulsion with respect to each other, the spring 108 only serves to return the follower permanent magnet element 14 to its initial position. That is, when the magnets are aligned S to S or N to N, the spring 108 cannot return the follower permanent magnet element 14 to its initial position, even if the control permanent magnet element 12 is released by the hand of the operator.

Accordingly, Giannini does not disclose or suggest that a switch is changed over to the on position only when a predetermined operation is performed but is otherwise in a default off position. That is, Giannini does not disclose or suggest biasing the moving member “from the position in which the switching unit designates the operation to the position in which the switching unit designates no operation,” as required by claims 1, 5 and 11.

Further, Giannini discloses that, after the control element 12 is rotated beyond the limit 104a of the follower element 14, a 90° rotation of magnet 51 in a counterclockwise direction is required to bring the two magnets into oppositely poled alignment while a 270° rotation of the follower element 14 in the clockwise direction is required to attain oppositely poled alignment (Giannini, column 8, lines 10-18), and that the rotational limits of control element 12 may be reduced somewhat by placing a compression spring 108 within the hollow center of member 60 to resiliently bias the follower element 14 toward the spaced-apart position (the spaced-apart position being the position in which opposing poles of the control and follower elements do not directly face each other), and thus the axial forces on follower element 14 will become neutralized while the control element 12 is disposed at a rotational position at which attractive forces still remain between the magnets 30 and 51 (Giannini, column 8, lines 33-41). Thus, Giannini discloses aligning the control element 12 and the follower element 14 with respect to one another by means of a compression spring within the hollow center of the member 60 to bias the follower element toward the spaced-apart position so that the control element 12 and the follower element 14 may be properly aligned.

Giannini does not disclose or suggest a switching-function change-over unit (or portion per claim 5, or means per claim 11) that moves the moving member inside the air-tight unit by magnetic force in opposition to the biasing force of the biasing unit (such as the urging force of the coil 65), as required by claims 1, 5 and 11. That is, Giannini does not disclose or suggest a switching-function change-over unit (or portion per claim 5, or means per claim 11) that exerts a magnetic force on a member designating an operation of the switch, such that the magnetic force is in opposition to a biasing force. Accordingly, even taken together in combination, Taira, Horton and Giannini do not disclose or suggest the recitations of claims 1, 5 and 11.


Further, it is respectfully submitted that there is no suggestion or motivation for combining the references taught in the cited references. The Examiner seems to acknowledge that there is no such suggestion or motivation (Office Action, page 6), but alleges that one of ordinary skill in the art would have known about the type of teachings provided in Giannini, and alleges that the motivation would have been implicit and apparent to one of ordinary skill in the art. Giannini does not disclose or suggest a medical or surgical device, let alone an endoscope. It is respectfully submitted that, in making a proper rejection over a combination of references, the suggestion or motivation for combining must be present in the cited art and the Examiner cannot rely on his or her intuition about what a person of ordinary skill in the art would have or would not have known or realized.

Claims 2-4 depend from claim 1, claims 6 and 8-10 depend from claim 5 and claims 14-16 depend from claim 11. Accordingly, claims 2-4, 6, 8-10 and 14-16 are patentably distinguishable over the cited art for at least the same reasons as their respective base claims.

In view of the foregoing discussion, withdrawal of the rejection and allowance of the application are respectfully requested. Accordingly, the Examiner is respectfully requested to reconsider the application, allow the claims as amended and pass this case to issue.

Respectfully submitted,

THIS CORRESPONDENCE IS BEING
SUBMITTED ELECTRONICALLY
THROUGH THE UNITED STATES
PATENT AND TRADEMARK OFFICE
EFS FILING SYSTEM
ON MAY 22, 2007


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